

Federal Communications Commission

DA 03-778

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,	i	
FM Broadcast Stations,)	
(Silverton, Texas))	MB Docket No. 03-72
)	RM- I0674
)	
(Leedey, Oklahoma))	MB Docket No. <u>03-73</u>
)	RM- 10675
)	
(Eden, Texas))	MB Docket No. 03-74
)	RM- I0676
)	
(Memphis, Texas))	MB Docket No. 03-75
)	RM- I0677

NOTICE OF PROPOSED RULE MAKING

Adopted: March 12, 2003

Released: March 14, 2003

Comment Date: May 5, 2003

Reply Date: May 20, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a multiple docket *Notice of Proposed Rule Making* setting forth four separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. In each instance, the petitioner has promised to apply for the requested channel, if allotted. Each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket *Notice of Proposed Rule Making* issued in accordance with the Commission's *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rulemaking*. Each proposal has its own docket and rule making number, and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding **duplicative** actions. We request comments and/or counterproposals to the following proposals:

A. MB Docket No. 03-72; RM-10674

Petitioner: Maurice Salsa
5616 Evergreen Valley Drive
Kingwood, Texas 77345

Proposal: Allot Channel 252A at Silverton, Texas as the community's first local aural service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Silverton, Texas	--	252A

Coordinates: 34-78-15 NL and 101-13-09 WL

Additional Information: Channel 252A can be allotted to Silverton with a site restriction of 8.2 km (5.1 miles) east of Silverton at the referenced coordinates indicated above.

Petitioner states that Silverton is an incorporated community of 764 persons and the county seat of Briscoe County. Petitioner further states that Silverton has its own mayor, post office, fire department, school district, city hall, and several local churches.

FCC Contact: Deborah A. Dupont (202) 418-7072

B. MB Docket No. 03-73; RM-10675

Petitioner: Robert Fabian
4 Hickory Crossing Lane
Argyle, Texas 76226

Proposal: Allot Channel 297A at Leedey, Oklahoma as the community's first local aural service

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Leedey, Oklahoma	--	297A

Coordinates: 35-56-36 NL and 99-23-48 WL

Additional Information: Channel 297A can be allotted to Leedey with a site restriction of 9.4 km (5.8 miles) northwest of Leedey.

Petitioner states that Leedey is an incorporated community with a population of over 500 persons. Petitioner further states that Leedey has its own mayor, post office, fire department, school district, city hall, and several local churches.

FCC Contact: Deborah A. Dupont (202) 418-7072

C. MB Docket No. 03-74; RM-10676

Petitioner: Linda Crawford
3500 Maple Avenue, #132
Dallas, Texas 75219

Proposal: Allot Channel **294A** at Eden, Texas, as the community's second local FM service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Eden, Texas	283A	294A , 283A

Coordinates: 31-10-00 NL and 99-57-01 WL

Additional Information: Channel **294A** can be allotted to Eden with a site restriction of 11.4 km (7.1 miles) southwest of Eden. Concurrence in this allotment has been received from the Mexican government (The proposed allotment requires concurrence by Mexico because it is located within 320 kilometers [199 miles] of the Mexican border.)

Petitioner states that Eden is an incorporated city with a population in excess of 1,675 persons. Petitioner further states that Eden has its own mayor, school system, post office, fire department, city hall, and several local churches.

D. MB Docket No. 03-75; RM-10677

Petitioner: Maurice Salsa
5616 Evergreen Valley Drive
Kingwood, Texas 77345

Proposal: Allot Channel 283A at Memphis, Texas, as the community's third local FM service.¹

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Memphis, Texas	387C1, 292A	283A, 287C1, 292A

Coordinates: 34-41-14 NL and 100-27-03 WL

Additional Information: Channel **283A** can be allotted to Memphis with a site restriction of 8.7 km (5.4 miles) southeast of Memphis.

Petitioner states that Memphis is an incorporated community with a population of 2,431 persons and that it is the county seat of Hall County. Petitioner further states that Memphis has its own mayor, post

¹ See *Memphis, Texas*, MB Docket No. **02-175**, DA 03-272 (rel. January 31, 2003) (added Channel 292A at Memphis, Texas).

office, fire department, school district, city hall, and several local churches,

FCC Contact: Deborah A. Dupont (202) 418-7072

3. Comments, reply comments, counterproposals and other pleadings filed in response to this *Notice of Proposed Rule Making* should reference the docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **May 5, 2003**, and reply comments on or before **May 20, 2003**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554.

5. Parties who choose to file by paper must file an original and four copies of each filing. Filing can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments. Section 73.202(b) of the Commission's Rules.²

7. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket

² See Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 Fed.Reg. 11549 (February 9, 1981).

unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which **has not** been served on **the** person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM (TV) Table of Allotments, Section 73.202(b) (73.606(b)) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. The proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the **Secretary**, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.